

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yu et al.
Title: TUMOR NECROSIS FACTOR-GAMMA
Appl. No.: 09/899,059
Filing Date: 7/6/2001
Patent No.: 7,597,886 B2
Grant Date: 10/6/2009
Examiner: Romeo, David S.
Art Unit: 1647
Confirmation Number: 5121

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 10/6/2009 as U.S. Patent No. 7,597,886 B2.

The Patent Office determined that the patent is entitled to 1443 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of “overlap” are limited to “periods of time . . . [that] occur on the same day.” *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays “occur on the same day.” *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to **2035** days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 2434 days

(b) Total Applicant delay: 399 days

Final PTA Determination: 2035 days

Applicants therefore respectfully request that the patent be accorded 2035 days PTA.

The patent is not subject to a terminal disclaimer.

Applicants would like to point out that on July 23, 2009, Applicants filed a Supplemental Declaration at the request of the U.S. PTO. The Examiner indicated that the original Declaration could not be found, and a new one was required. Applicants should not be charged 76 days of PTA for complying to the Examiner's request.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date: December 4, 2009

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Docket Number: 075977-0122
Application Number: 09/899059
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	07/06/2001	0		
	14 month From Application date	09/06/2002	427		
Edit Delete	Restriction Requirement	09/23/2003	809	382	
Edit Delete	Restriction Requirement Response Received at PTO	10/23/2003	839		
	Restriction Requirement Response Filed + 4 months	02/23/2004	962		
	3 Year Period Starts	07/06/2004	1,096		
Edit Delete	Restriction Requirement	02/14/2007	2,049	(1087)	
	Restriction Requirement + 3 months	05/14/2007	2,138		
Edit Delete	Restriction Requirement Response Received at PTO	06/14/2007	2,169		31
Edit Delete	Non-Final Office Action	09/05/2007	2,252		
	Non-Final Office Action + 3 months	12/05/2007	2,343		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/04/2008	2,433		
Edit Delete	Notice of Non-Compliance	06/26/2008	2,547		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/08/2008	2,590		(247), (157)
Edit Delete	IDS under 1.704(c)(8) filed at PTO	10/08/2008	2,651		(218), (61) 308
Edit Delete	Final Office Action	11/26/2008	2,700		
Edit Delete	Final Office Action Response Received at PTO	02/26/2009	2,792		
	Final Office Action + 3 months	02/26/2009	2,792		
Edit Delete	Advisory Action	03/24/2009	2,818		
Edit Delete	Final Office Action Response Received at PTO	04/27/2009	2,852		(60), (60), (60) 60
Edit Delete	Notice of Appeal Received at PTO	05/22/2009	2,877		
Edit Delete	Notice of Allowance	05/27/2009	2,882		
Edit Delete	PTO Request For Info. 37 CFR 1.105	06/26/2009	2,912		
Edit Delete	Issue Fee Paid	08/11/2009	2,958		
Edit Delete	Patent Grant Date	10/06/2009	3,014	(1918) 2052	
			Totals:	2,434	399
			PTA:	2,035	